

.....16th March.....1977

THE LAW SOCIETY OF SCOTLAND
LEGAL AID CENTRAL COMMITTEE

MEMORANDUM

From..........

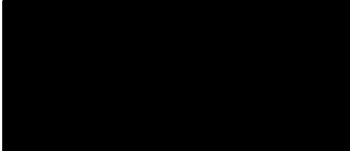
To..........

Charging of Precognitions under the Block Fees

I wrote you a memorandum on this regarding English cases and you gave me valuable assistance. I would be grateful for some further views.

When a client applies for legal aid and he is offered a certificate but refuses it a solicitor is entitled to payment of his charges under Section 6(5) of the Legal Aid (Scotland) Act 1967.

As regards precognitions we have been allowing these on the block fees because the Auditor on one occasion informally indicated that he would have been inclined to allow block fees if a case had been referred to him for taxation. My own view is that this is not correct since the matter has not gone on to proceedings. In a case to hand the block fee charges are over £100 whereas on detailed they would be £25. I would be glad of your views.



17th March 1977.

THE LAW SOCIETY OF SCOTLAND

MEMORANDUM

From

To

charging of Recognitions.

This is not so easy a problem as the last, as Section 6(5) says that the solicitor shall "be deemed" to have been acting for an assisted person, ~~although~~ the facts are otherwise.

Nevertheless, I agree that Block Fees are inappropriate.

● The key lies in Gen. Reg (e) (first sentence) of the Court of Session Table which says that in all cases where, by reason of the procedure involved or otherwise the Block Fees are not conveniently applicable or do not properly cover the work, accounts shall be charged on the basis of the Detailed Fees.

This is such a case. I therefore disagree with the Auditor & I agree with you.

ksu


made to Court of Session.

If disputed - obtain note of his reasons.

THE LAW SOCIETY OF SCOTLAND
LEGAL AID CENTRAL COMMITTEE

MEMORANDUM

From.....

To.....

Taxation of Section 1 Accounts


I confirm that in Section 6(5) claims fees for precognitions in the general run of cases should be allowed on the basis of detailed charges rather than block fees. The reasoning for this is the same as applied to solicitors' accounts in English cases, the solicitor was not actually involved in Court proceedings and accordingly not entitled to invoke the block table for precognitions.

Period of Effectiveness of Legal Aid Certificate

Article 16(2)(b) of the 1958 Scheme says the Legal Aid Certificate shall cease to have effect unless the summons, defences or other writ relating to the applicant's initial interest in the proceedings and the Certificate are lodged in Court within three months or such longer period as the Committee may determine from the date of the Certificate.

Previously in the Court of Session a Legal Aid Certificate could not be lodged until after service had actively been effective and the induciae expired. Following the new procedure under which the dues have to be paid when the summons is signetted it appears that a process is raised at signetting and that the summons and Certificate can be lodged at that point of time. If this course is adopted by solicitors within the three months or other period then the Certificate should be regarded as effective. This is in line with the previous decision taken by the Central Committee as regards Sheriff Court cases where the solicitor should be able to lodge the Certificate at the earliest possible moment in order to sustain the effectiveness of the Certificate.

If this new procedure is likely to cause any difficulty the matter can be reconsidered.



WM v. MM

[REDACTED]

- PURSUER

against

[REDACTED]

- DEFENDER

This is a taxation following upon a remit by the Law Society.

An application for Legal Aid was made by the Pursuer, was considered and granted by the Law Society but the Legal Aid Certificate was not issued because the offer was not taken up by the Pursuer. There were no proceedings therefore under a Legal Aid Certificate.

The Solicitors lodged an account with the Law Society in respect of the work they had performed for their client.

The account inter alia contains entries for precognition fees charged in accordance with the Table of Fees Chapter III Part II and Part IV item 5.

The Auditor heard the parties on 5th August 1977.

The Law Society maintained that because there were no proceedings in Court the proper method of charging for the work done was by time and line and the dispute is about the correct charging.

The Legal Aid (Scotland) Act 1967 Section 6 Sub-section 5 provides:-

"Where, on an application for legal aid under section 1 of this Act in connection with any proceedings, the appropriate authority decide that the applicant is (subject to the issue and acceptance of a legal aid certificate) entitled to legal aid for the purpose of those proceedings, any solicitor who has acted for the applicant in preparing and submitting the application shall, for the purposes of the last foregoing subsection, be deemed, when so acting, to have been acting for a person receiving legal aid, notwithstanding that a legal aid certificate is not issued and accepted."

Sub-section 4 of the Act provides for payment out of the Fund to Solicitors. In this case the words of Sub-section 5 applied mean that the /



the Solicitors here are to be deemed to have been acting for a person receiving legal aid. In order to ascertain what fees would have been chargeable a reference to the Table of Fees in the Court of Session is necessary.

The Table provides for Detailed charges under Chapter I and for Alternative fees under Chapter III. This must clearly mean that the Solicitor may charge his Account under either thus giving him an option which he may exercise subject to paragraph (e) which provides:-

"In all cases where by reason of the procedure involved or otherwise the inclusive fees as set forth in the Alternative Table of Fees Chapter III hereof, are not conveniently applicable or do not properly cover the work involved, accounts shall be charged on the basis of the Table of Fees Chapter I hereof. In all other cases it shall be in the option of the solicitor to charge an account either on the basis of the Table of Fees Chapter I hereof or on the basis of the Alternative Table of Fees Chapter III hereof, but in accounts as between party and party it shall not be competent to charge partly on one basis and partly on the other. In accounts as between Husband and Wife in consistorial cases and between solicitor and client, however, it shall be competent to charge an account partly on one basis and partly on the other but so however that if an inclusive fee is charged under the Alternative Table of Fees Chapter III hereof no work falling thereunder shall be charged again under the Table of Fees Chapter I hereof."

It will be seen that where the inclusive fees are not conveniently applicable or do not properly cover the work involved Chapter I fees shall be charged. In the opinion of the Auditor neither of these situations apply here. It is conveniently applicable to charge alternative fees and it cannot possibly be maintained that the alternative fees do not cover the work involved.

Accordingly the Auditor has decided that the Solicitors' charges in dispute should be upheld and he has so ruled.



the Solicitors here are to be deemed to have been acting for a person receiving legal aid. In order to ascertain what fees would have been chargeable a reference to the Table of Fees in the Court of Session is necessary.

The Table provides for Detailed charges under Chapter I and for Alternative fees under Chapter III. This must clearly mean that the Solicitor may charge his Account under either thus giving him an option which he may exercise subject to paragraph (e) which provides:-

"In all cases where by reason of the procedure involved or otherwise the inclusive fees as set forth in the Alternative Table of Fees Chapter III hereof, are not conveniently applicable or do not properly cover the work involved, accounts shall be charged on the basis of the Table of Fees Chapter I hereof. In all other cases it shall be in the option of the solicitor to charge an account either on the basis of the Table of Fees Chapter I hereof or on the basis of the Alternative Table of Fees Chapter III hereof, but in accounts as between party and party it shall not be competent to charge partly on one basis and partly on the other. In accounts as between Husband and Wife in consistorial cases and between solicitor and client, however, it shall be competent to charge an account partly on one basis and partly on the other but so however that if an inclusive fee is charged under the Alternative Table of Fees Chapter III hereof no work falling thereunder shall be charged again under the Table of Fees Chapter I hereof."

It will be seen that where the inclusive fees are not conveniently applicable or do not properly cover the work involved Chapter I fees shall be charged. In the opinion of the Auditor neither of these situations apply here. It is conveniently applicable to charge alternative fees and it cannot possibly be maintained that the alternative fees do not cover the work involved.

Accordingly the Auditor has decided that the Solicitors' charges in dispute should be upheld and he has so ruled.



M/I.

LEGAL AID CODE
00323

K503

ACCOUNT OF EXPENSES

incurred by

The Law Society of Scotland.

to

Messrs. Drummond & Co., W.S.,
Edinburgh.

instructed by

Messrs. McKenzie & Co.,
Solicitors, Kilmarnock.

in causa.

[REDACTED]

PURSUER.

against

[REDACTED]

[REDACTED] whose present
whereabouts are to the Pursuer
unknown.

DEFENDER.

37/18/056677076.

1976.

Sept. 13

Writing you in reply ackng.,

Sept.

/ in reply ackng., enclosures, commenting with our views on the sufficiency of the evidence, advising thereon, confirming we shall submit the papers to the Law Society and make the necessary application for Legal Aid.

1. 35

Perusing & considering papers sent.
1 hr.

5. 00

Writing Law Society submitting Legal Aid papers.

1. 35

Nov. 4

Writing you reporting we have to-day heard from the Law Society that your client's application has been granted and fully discussing and advising on the assessment placed upon him.

1. 35

Writing you reporting we have now been informed by the Law Society that your client's application for Legal Aid has been treated as abandoned as he has failed within a reasonable period to return the letter of undertaking and to pay the first instalment and requesting a note of your entries.

1. 35

Writing you in reply ackng., a note of your entries.

1. 35

Writing Law Society with accounts.

0. 35

Posts & Incidents 12%

1 47

1 47 12. 20

| | | | | |
|------|-----|----|---|---------|
| | | | 12.20 | |
| 1977 | APR | 29 | Writing Law Society in reply and advising with regard to proposed abatements | 1.35 |
| | JUN | | Account Fee | 13.50 |
| | | | Session Fee thereon | 1.35 |
| | | | | <hr/> |
| | | | | 28.40 |
| | | | Posts & Incidents @12% | 3.40 |
| | | | | <hr/> |
| | | | | 31.80 |
| | | | Correspondents Account | 47.76 |
| | | | | <hr/> |
| | | | | 79.56 |
| | | | Auditor's Fee | 2.00 |
| | | | | <hr/> |
| | | | | £ 81.56 |

ACCOUNT OF EXPENSES

incurred by

The Law Society of Scotland.

to

Messrs. McKenzie & Co., Solicitors,
Kilmarnock.

in causa.

PURSUER.

against

whose present whereabouts are
to the Pursuer unknown.

DEFENDER.

37/18/056677-76.

1976.

Sept. 1

Attendance on you on your call
discussing your matrimonial
affairs , noting you wish to
Divorce your wife on the
grounds of her desertion,
advising you on the evidence we

1976.

Sept.

/ advising on the evidence we require, noting witness who would be prepared to assist and arranging you will have this witness contact us, discussing your financial circumstances, obtaining your Statement and arranging further appointment.

Assess

Fee for your Statement. 2 shs.

17. 00

Making 3 copies thereof. 2 shs.ea.

1. 60

Session Fee.

1. 86

Fee for Statement by [REDACTED]

1 sh..

8. 50

Making 3 copies thereof. 1sh.ea.

0. 80

Session Fee.

0. 93

Attendance on you, advising on the procedures which will be adopted, going over Legal Aid Application Forms and having you complete same.

$\frac{1}{2}$ hr.

4. 25

Framing Legal Aid Application Form. 1 sh.

1. 70

Extending & 2 copies. 1sh.ea.

0. 80

Framing Legal Aid Memorandum. 1sh.

1. 70

£ 39. 14

2

*Simon & Schuster
Sh. 100 in the copy
Not applicable - the
proceedings are*

1700

1. 86

8. 50

0. 93

Nov. 9

Writing you reporting we have to-day heard from our Edinburgh Agents who have been informed by the Law Society that you have been offered Legal Aid and fully discussing and advising on the assessment placed upon you.

1. 35

Writing you reporting we have now been informed by our Edinburgh Agents who have heard from the Law Society that your application for Legal Aid has been treated as abandoned as you have failed within a reasonable period to return the Letter of Undertaking and to pay the first instalment.

1. 35

Posts & Incidents 12%

5 12

5 12

42. 64

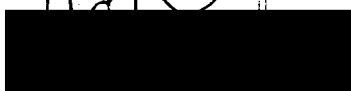
Aid Outlays.

5 12

£

47 76

The Auditor of the Court of Session is respectfully requested to tax the foregoing account on an Agent and Client basis, third party or Fund paying.



10.5.77

Deputy Secretary
Legal Aid Central Committee
Law Society of Scotland